

HHD-CV19-5059848

RETURN DATE: JUNE 25, 2019

**KRISTEN A. FESTA AND
BRIAN D. FESTA PPA
ANDREW FESTA**
Plaintiffs,

v.

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH,**
Defendant.

: SUPERIOR COURT
:
:
: JUDICIAL DISTRICT
: OF HARTFORD,
: AT HARTFORD
:
:
:
:
: JUNE 12, 2019

AMENDED APPLICATION FOR TEMPORARY EX PARTE INJUNCTION

The Applicants, Kristen A. Festa and Brian D. Festa PPA Andrew Festa (hereinafter, “the Applicants”) have or will commence an action against the Defendant, State of Connecticut Department of Public Health seeking declaratory judgment and injunctive relief, declaring that the Defendant has acted in violation of Reg. Conn. State Agencies § 10-204a-4(c) and denied the Applicants the equal protection of the laws. This action will also seek an injunction enjoining the Defendant from continuing to make publicly available confidential immunization information as prohibited by said regulation, and from making publicly available any other such confidential immunization information.

Pursuant to Conn. Gen. Stat. § 52-473, the Applicants apply for a temporary injunction, enjoining the State of Connecticut Department of Public Health from continuing to make publicly available any immunization information collected by the department as described in Reg. Conn. State Agencies § 10-204a-4, and from releasing any additional immunization information, for the following reasons:

1. The Applicants have or will commence a civil action seeking a declaratory judgment that the Defendant has acted in violation of Reg. Conn. State Agencies § 10-204a-4(c), resulting in a denial of equal protection of the laws.
2. The Applicants Kristen A. Festa and Brian D. Festa are the parents of Andrew Festa, a seven year-old male child (hereinafter, “A.F.”).
3. A.F. was diagnosed with autism spectrum disorder (“ASD”) in or about September 2014, which diagnosis persists at present.
4. A.F. is a student at Meliora Academy in Meriden, Connecticut, where he has been enrolled continuously since in or about June 2016.
5. Meliora Academy (“Meliora”) is a nonpublic educational institution which provides “intensive and comprehensive educational services to students with autism spectrum and related disorders.”
https://www.melioraacademy.net/about_us
6. The Defendant is the State of Connecticut Department of Public Health, with its principal place of business located at 410 Capitol Avenue, Hartford, CT 06134.
7. Since his enrollment at Meliora and continuing through present, A.F. has utilized an exemption from mandatory immunization in accordance with Conn. Gen. Stat. § 10-204.
8. Reg. Conn. State Agencies § 10-204a-4 governs the defendant’s collection of immunization data for public and nonpublic school students in Connecticut, and reads as follows:

(a) Immunization data specific to the individual shall be recorded on a student's health assessment record according to Connecticut General Statutes, Section 10-206 (d).

(b) Annually, the department shall prepare and distribute to all public and nonpublic schools a school immunization survey summary form. Schools shall complete the survey form and return the completed form to the department at a place and time determined by the department.

(c) All immunization information collected by the department shall be confidential.

9. Upon information and belief, the immunization information collected by the defendant and referenced in Reg. Conn. State Agencies § 10-204a-4(c) includes the number of religious and medical exemptions used at each school for which this information is collected. <https://portal.ct.gov/DPH/Immunizations/School-Survey>
10. Upon information and belief, on May 3, 2019 the Defendant released school immunization information to the public by posting it on their website at <https://portal.ct.gov/DPH/Immunizations/School-Survey>, in direct violation of Reg. Conn. State Agencies § 10-204a-4(c). Upon information and belief, this information included the percentage of students in grades K through 12 using religious and medical exemptions from mandatory immunization at each and every school in Connecticut, except those with less than 30 students. The Defendant also published the total number of religious and medical exemptions used at all Connecticut schools.
11. On or about May 3, 2019, the CT Mirror published an article on its website titled, “State releases ‘startling’ data on unvaccinated children.”

<https://ctmirror.org/2019/05/03/connecticut-releases-startling-data-on-unvaccinated-children/>

12. On or about May 4, 2019, the Hartford Courant published an article titled, “These 10 schools have the most vaccine exemptions in Connecticut.” This article listed Meliora as the school with the seventh-highest rate of exemption usage in the state at 18.5 percent. <https://www.courant.com/news/connecticut/hc-news-connecticut-top-10-schools-vaccine-exemptions-20190504-kksml5p4rredvhrt6bk6f2a4wq-story.html>.

The information in this article was obtained directly from the immunization information published by the Defendant on its website on May 3, 2019.

13. Almost immediately after the release of the immunization information by the Defendant on May 3, 2019, hateful and vitriolic statements regarding nonvaccinated students and parents began appearing on the internet. Upon information and belief, these and prior statements are characteristic of the harassment commonly experienced by parents who do not immunize their children due to a religious objection. For instance, one Facebook user made the post, “If my kid can’t bring peanut butter to school then yours can’t bring the deathly plague. Vaccinate or I’m bringing the Jiffy.” Another Facebook user wrote, “Unvaccinated kids should have to wear something on them at all times to let people know they may be exposing themselves to diseases.” Still another Facebook comment read, “So you are an antivaxer? You should probably move to a private island If you don’t like the US. We would all be happy with that, especially if you are a scumbag antivaxer. Ignorant trash like you are why we have a Measles epidemic reoccurrence.”

14. As Meliora was publicly exposed as a school with one of the highest rates of exemption usage, all students and parents of students at Meliora and other schools with high exemption rates—including the Applicants—are potential targets of harassment. Therefore the release of this data has exposed the Applicants and many other Connecticut schoolchildren to irreparable harm, as follows:

- i. As a result of the Defendant's conduct, the Applicants have suffered mental and emotional distress due to the vitriolic and hateful statements from the public directed generally at all persons who claim a religious exemption from the mandatory vaccination requirement, which includes the Applicants.
- ii. Upon information and belief, Meliora has received communications from parents of students, concerned that the Defendant's release of immunization information will be detrimental to them and their children. This is evidence that these parents may be suffering from mental and/or emotional distress as a result of the Defendant's illegal conduct.
- iii. Although there has not been a specific threat levied at A.F., the public response to the Defendant's release of confidential immunization information has been overwhelmingly negative and hateful. Since A.F.'s school, Meliora, has been publicly exposed as a school in the top ten of schools in terms of highest exemption rates, it is reasonable to presume that Meliora

students like A.F. may become targets of hate speech and other harassment.

15. Therefore it is necessary to immediately remove the confidential immunization information from the Defendant's website and other publicly-available publications, and to enjoin the Defendant from releasing any additional confidential immunization information.
16. The Applicants have no adequate remedy at law, because monetary damages are not at issue.
17. The Applicants can establish the facts set forth in this application and affidavit, and believe there is a probability of success at trial of this matter, i.e., that the Defendant has violated Reg. Conn. State Agencies § 10-204a-4(c) by releasing confidential immunization information, which has denied the Applicants the equal protection of the laws.
18. The equities favor granting the injunction. The Defendant should not be permitted to act in direct violation of its own agency regulation, which was adopted by the legislature and remains in full effect at present.
19. This is the first application for an injunction in this matter.

Kristen A. Festa, Plaintiff-Applicant
123 Farmington Avenue - P.O. Box 175
Bristol, CT 06010

Brian D. Festa, Plaintiff-Applicant
123 Farmington Avenue - P.O. Box 175
Bristol, CT 06010

PROPOSED WAIVER OF BOND

Pursuant to Conn. Gen. Stat. § 52-472, the Applicants request that the Court waive bond for the applicant for good cause shown, viz., the Defendant will not suffer any pecuniary harm pending the resolution of this action. Furthermore, the Applicants have very limited financial resources.

WHEREFORE, the Applicants seek an order from this Court for a temporary injunction, enjoining, prohibiting and restraining the State of Connecticut Department of Public Health from continuing to make publicly available any immunization information as prohibited by Reg. Conn. State Agencies § 10-204a-4(c), and from releasing any additional immunization information as prohibited by said regulation.

THE APPLICANTS,
KRISTEN A. FESTA AND BRIAN D. FESTA
PPA ANDREW FESTA

Kristen A. Festa, Plaintiff-Applicant
123 Farmington Avenue - P.O. Box 175
Bristol, CT 06010

Brian D. Festa, Plaintiff-Applicant
123 Farmington Avenue - P.O. Box 175
Bristol, CT 06010

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v.

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH,**
Defendant.

: SUPERIOR COURT
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ORDER TO SHOW CAUSE

Whereas, the foregoing application with prayer and motion for a temporary injunction, duly verified, has been presented to a judge of the Superior Court, the court not now being in session, and

Whereas, upon application of the plaintiffs, it appears that an order should be issued directing the defendant in this action to appear before the court to show cause why a temporary injunction should not issue;

Now therefore, it is ordered that the defendant be summoned to appear before the Superior Court for the Judicial District of Hartford, at Hartford, the undersigned or some other judge of that court in Court Room _____ in the Superior Court in and for the Judicial District of Hartford, at 95 Washington Street, Hartford, Connecticut, 06106, on _____ 2019, and then and there to show cause why a temporary injunction should not issue against them as prayed for in the foregoing application.

Dated at _____

BY THE COURT (_____, J.)

RETURN DATE: JUNE 25, 2019

V.

SUPERIOR COURT

**JUDICIAL DISTRICT
OF HARTFORD,
AT HARTFORD**

JUNE 12, 2019

To Any Proper Officer:

Hereof fail not, but due service and return make.

Dated at _____.

Commissioner of the Superior Court

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PROPOSED ORDER ON APPLICATION FOR TEMPORARY INJUNCTION

The plaintiffs' application and affidavit for a temporary injunction having come before the Court pursuant to an order to show cause why a temporary injunction should not issue as prayed for and the parties appeared and were fully heard;

[or]

The defendant was duly notified of the order as appears by the officer's return endorsed thereon, but the defendant failed to appear and it appearing to the court or undersigned authority that a temporary injunction ought to issue, and

That, for good cause shown the Court is of the opinion that the temporary injunction ought to issue without bond.

These are therefore, by authority of the State of Connecticut to command and enjoin you the State of Connecticut Department of Public Health and each of your officers, servants, agents, and employees to wholly and absolutely desist and refrain from continuing to make publicly available any immunization information as prohibited by Reg. Conn. State Agencies § 10-204a-4(c), and from releasing any additional immunization information as prohibited by said regulation until the return day of the writ and complaint and until further order of the court.

Dated at _____.

Judge/ Clerk/ Assistant Clerk

RETURN DATE: JUNE 25, 2019	:	SUPERIOR COURT
	:	
KRISTEN A. FESTA AND	:	
BRIAN D. FESTA PPA	:	JUDICIAL DISTRICT
ANDREW FESTA	:	OF HARTFORD,
<i>Plaintiffs,</i>	:	AT HARTFORD
	:	
v.	:	
	:	
	:	
STATE OF CONNECTICUT	:	
DEPARTMENT OF PUBLIC HEALTH,	:	
<i>Defendant.</i>	:	JUNE 12, 2019

To Any Proper Officer:

Dated at _____.

_____, J.

CERTIFICATION OF NOTICE
TO OPPOSING PARTIES

The undersigned hereby certifies that on June 12, 2019, pursuant to Practice Book § 4-5, the applicant gave notice of this application and a copy thereof to the following parties in the manner indicated:

Darren Cunningham, Esq.
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
VIA EMAIL ONLY: darren.cunningham@ct.gov

/s/ Kristen A. Festa

Kristen A. Festa, Plaintiff-Applicant

AFFIDAVIT IN SUPPORT OF EX PARTE TEMPORARY INJUNCTION

The Affiant, Kristen A. Festa, being duly sworn, deposes and says:

1. I am over 18 years of age and I understand the obligations of an oath.
2. I have read the contents of this foregoing application for temporary ex parte injunction and I have made reasonable investigation into their veracity.
3. I have personally reviewed the immunization data publicly released by the Defendant. I have also personally reviewed all of the newspaper articles and comments/statements posted online by various individuals referenced herein. I also spoke to a senior management personnel at Meliora Academy, as well as another parent of a student at Meliora Academy, shortly after the May 3, 2019 release of immunization by the Defendant. I have also interviewed LeeAnn Ducat regarding some of the events described herein.
4. I believe the statements made in this application to be true and correct to the best of my knowledge and belief.
5. Regarding the allegations of which I do not have personal knowledge. I believe them to be true based on specified information, documents, or both.

Kristen A. Festa

State of Connecticut }
 } ss: Bristol
County of Hartford }

Personally appeared Kristen A. Festa, and made oath to the truth of the matters contained in foregoing application, before me.

Notary Public
My commission expires: